
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Gary M. Schikora and George Horner Trust)	File Number: EB-04-AN-020
)	
Owner of Antenna Structure #1005017)	NAL/Acct. No. 200532780004
Fairbanks, Alaska)	FRN 0011766979
ASR #1005017)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: December 13, 2004

By the Resident Agent, Anchorage Resident Agent Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Gary M. Schikora ("Schikora") and the George Horner Trust ("Horner Trust"), owners of antenna structure #1005017, in Fairbanks, Alaska, apparently willfully and repeatedly violated Section 17.57 of the Commission's Rules ("Rules")¹ by failing to immediately notify the Commission of a change in ownership of an antenna structure. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),² that Schikora and the Horner Trust are apparently liable for a forfeiture in the amount of three thousand dollars (\$3,000).

II. BACKGROUND

2. On May 20, 2003, agents from the Anchorage Resident Agent Office inspected antenna structure #1005017, located at 1648 College Road, adjacent to the fairgrounds in Fairbanks, Alaska. The Antenna Structure Registration ("ASR") indicated Donald G. Creamer, Sr. ("Creamer"), was the registered owner of the antenna structure. The agents located ASR #1005017 posted at the site. At the time of inspection, Commission records indicated that antenna structure #1005017 was to have painting and lighting in accordance with FCC Paragraphs 1, 3, 12, and 21. The agents observed that the paint on the antenna structure was faded and chipped, potentially reducing visibility of the structure.

3. On February 10, 2004, an agent from the Anchorage Resident Agent Office issued a Letter of Inquiry ("LOI") to Creamer. The LOI requested Creamer to respond to questions concerning the paint on antenna structure #1005017. The Anchorage Office did not receive the requested response.

4. On April 5, 2004, an agent from the Anchorage Resident Agent Office reissued the LOI to Creamer. On April 20, 2004, the Anchorage Resident Agent Office received a Response to the LOI issued to Creamer which stated that Gary M. Schikora and the George Horner Trust were the current

¹47 C.F.R. § 17.57.

²47 U.S.C. § 503(b).

owners of antenna structure #1005017.³ According to the Response, the settlement date for the transaction occurred on December 15, 2003.

6. On July 20, 2004, an Anchorage agent issued a LOI to Schikora and the Horner Trust, requesting information concerning the ownership and painting status of antenna structure #1005017. The July 20, 2004, LOI specifically noted that the owner of an antenna structure must immediately notify the Commission using FCC Form 854 of any change in ownership information. On July 26, 2004, Schikora called the agent to discuss the LOI. The agent explained to Schikora that he needed to submit a written response to the LOI. The agent also advised Schikora of the requirement that he immediately change the antenna structure ownership information on the ASR. On August 9, 2004, the Anchorage Resident Agent Office received a response to the LOI issued to Schikora and the Horner Trust.⁴ The response stated that Schikora and the Horner Trust did own antenna structure #1005017, that the antenna structure was currently being repainted, and that a Statutory Warranty Deed had been recorded locally in the Fairbanks, Alaska Recording District. The response failed to indicate, however, what steps Schikora and the Horner Trust were taking to ensure that the FCC ASR for antenna structure #1005017 reflected Schikora and the Horner Trust as the current owners.

7. As of November 29, 2004, review of the Commission's ASR database continued to reflect Donald G. Creamer, Sr. as the antenna structure registrant for antenna structure #1005017.

III. DISCUSSION

8. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.⁵ The term "repeated" means the commission or omission of such act more than once or for more than one day.⁶

9. Section 17.57 of the Rules requires the owner of an antenna structure to immediately notify the Commission, using FCC Form 854, upon any change in structure height or change in ownership information.⁷ We require antenna structure owners to maintain current antenna structure registration information with the Commission and post ASR numbers at the base of antenna structures to allow for easy contact if problems arise.⁸ Schikora and the Horner Trust are the owners of antenna

³See Letter of Donald G. Creamer, Jr. to the Anchorage Resident Agent Office (April 13, 2004) ("Response").

⁴See Letter of Gary M. Schikora to the Anchorage Resident Agent Office (August 4, 2004).

⁵Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁶Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

⁷47 C.F.R. § 17.57.

⁸See, e.g., *American Tower Corporation*, 16 FCC Rcd 1282 (2001) (Notice of Apparent Liability); *American Tower Corporation*, 16 FCC Rcd 14937 (2001) (Consent Decree between the Commission and American Tower Corporation).

structure #1005017, located in Fairbanks, Alaska. An agent from the Anchorage Resident Agent Office advised Schikora and the Horner Trust on July 20, 2004, of the requirement to submit to the Commission information for ASR #1005017 to reflect the new ownership of the antenna structure. Review of the Commission's ASR records reveals that, as of November 29, 2004, the ASR for antenna structure #1005017 continues to indicate that Donald G. Creamer, Sr. is the current owner of the antenna structure.

10. Schikora and the Horner Trust received notice that they were required to change the ownership information filed with the Commission concerning antenna structure #1005017. Schikora and the Horner Trust failed to change this information, therefore, their violation of Section 17.57 is willful. The violation occurred on more than one day, therefore, it is repeated. Based on the evidence before us, we find that Schikora and the Horner Trust willfully and repeatedly violated Section 17.57 of the Rules by failing to immediately notify the Commission of a change in ownership information for antenna structure #1005017.

11. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement"), and Section 1.80 of the Rules, the base forfeiture amount for failure to file required forms or information with the Commission is \$3,000.⁹ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.¹⁰ Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors, a \$3,000 forfeiture is warranted.

IV. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, Gary M. Schikora and the George Horner Trust are hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of three thousand dollars (\$3,000) for violations of Section 17.57 of the Rules.¹¹

15. IT IS FURTHER ORDERED that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Gary M. Schikora and the George Horner Trust SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

16. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259.

17. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, Anchorage Resident Agent Office, P.O. Box 221849, Anchorage, Alaska 99522-1849 and must include the NAL/Acct. No. referenced in the caption.

⁹12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

¹⁰47 U.S.C. § 503(b)(2)(D).

¹¹47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80, 17.57.

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18. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

19. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹²

20. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Gary M. Schikora and George Horner Trust, P.O. Box 75458, Fairbanks, Alaska 99707.

FEDERAL COMMUNICATIONS COMMISSION

Marlene Windel
Resident Agent
Anchorage Resident Agent Office
Western Region
Enforcement Bureau

¹² See 47 C.F.R. § 1.1914.